IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORIGINAL SIDE

APPEAL NO.468 OF 1994
IN
NOTICE OF MOTION NO.768 OF 1993
IN
NOTICE OF MOTION NO.443 OF 1991
IN
SUIT NO.3649 OF 1989

1 a). Shri Shivshankar Jaganath Kini
1 b). Shri Dwarkanath Jaganath Kini
1 c). Shri Bhagwan Jaganath Kini
All of Bombay, Indian Inhabitant
residing at Kini House. Bhandup
village, Bhandup, Bombay 400 078.

1 d). Smt.Mallgi Dwarkanath Bhoir
of Bombay, Indian Inhabitant
residing at Dwarkanath Bhoir House,
Balkum Pada No.1, Thane.

2. Kunda Waman Kini,
of Bombay, Indian Inhabitant,
residing at ini House, Bhandup
village, Bhandup,Bombay 400m 078.

Appellants
(original applicants
No.1 & being original
Defendant nos.1(a) &
1(b).

versus

1 a). Pravin Bharatsingh Thakur,
1 b). Sharad Bharatsingh Thakur,
1 c). Rita Bharatsingh Thakur,
1 d). Nirmaladevi Vedprakash Thakur,
1 e). Nilima Vedprakash Thakur,
1 f). Neha Vedprakash Thakur and
1 g). Narendra Vedprakash Thakur,
all of Bombay, Indian Inhabitants,
residing at Sharad Villa,
J.M.Road, Bhandup,
Bombay 400 078.

2. Mithailal Daisangar Singh
of Bombay, Indian Inhabitant
carrying on business at
Rashtriya Dairy Farm,
Bhadkamkar Marg, Matunga(E),

Bombay 400 019.

3. Smt.Nirmala R. Mishra of
Bombay, Indian Inhabitant,
residing at B/25, Hit Niketan
Co-operative Housing Society
Ltd., S.P.S.Marg, Bhandup,
Bombayu 400 078.

4. Tukaram Raghunath Kini HUF
by its Karta Tukaram Raghunath Kini.

5 a). Smt.Annabai Devram Kini
5 b). Chandrakant Devram Kini
5 c). Janardan Devram Kini
5 d). Pandurang Devram Kini
5 e). Smt.Ashwini Ashok Mhatre
5 f). Kum.Sunita Devram Kini

All of Bombay, Indian Inhabitants,
residing at Kini House, Bhandup,
Bombay 400 078.

6. Janabai Gopal Kini HUF by its
Karta Janabai Gopal Kini

7. Waman Raghunath Kini
(since deceased)
all except respondent no.7
of Bombay, Indian Inhabitants,
residing at Kini House, Bhandup,
Bombay 400 078.

8. Manohar Atmaram Mhatre
of Kopri, Indian Inhabitant, residing
at Mhatre House, Kopri village,
Thane (East).

9. Mrs.Sulochna Ganesh Mhatre,
widow of Ganesh Atmaram Mhatre,
of Kopri, Indian Inhabitant, residing,
at Mhatre House, Kopri village
Thane (East)

10. Mrs.Vatsala Harishchandra Patil
of Mumbra, Indian Inhabitant,
residing at Mumbra, District Thane

11. Mrs.Pushpa Vilas Mhatre
of Kabadali, Indian Inhabitant,
residing at Kabadali, Thane.

Respondents
(Nos.1 to 3 -original
plaintiffs.

Nos. 4 to 7-original
defendant nos. 2 to 5
Nos.8 to 11-legal
heirs of appellant
no.2.)

ALONG WITH

APPEAL NO.484 OF 1994
IN
NOTICE OF MOTION NO.3169 OF 1989
IN
SUIT NO.3649 OF 1989

1. Smt.Kunda Waman Kini
of Bombay, Indian Inhabitant
residing at Kini House, Bhandup
village, Bhandup(West), Bombay
400 078, in their capacity as
heirs and legal representatives
of the original defendant no.1,
the deceased Balabai Raghunath
Kini.

Appellants/
original defendant
Nos.1(a) & 1(b).

versus

1 a). Pravin Bharatsingh Thakur,
1 b). Sharad Bharatsingh Thakur,
1 c). Rita Bharatsingh Thakur,
1 d). Nirmaladevi Vedprakash Thakur,
1 e). Nilima Vedprakash Thakur,
1 f). Neha Vedprakash Thakur and
1 g). Narendra Vedprakash Thakur,
all of Bombay, Indian Inhabitants,
residing at Sharad Villa,
J.M.Road, Bhandup,
Bombay 400 078.

2. Mithailal Daisangar Singh
of Bombay, Indian Inhabitant
carrying on business at
Rashtriya Dairy Farm,
Bhadkamkar Marg, Matunga(E),
Bombay 400 019.

3. Smt.Nirmala R. Mishra of
Bombay, Indian Inhabitant,
residing at B/25, Hit Niketan
Co-operative Housing Society

Ltd., S.P.S.Marg, Bhandup,
Bombayu 400 078.

4. Tukaram Raghunath Kini HUF
by its Karta Tukaram Raghunath Kini.

5 a). Smt.Annabai Devram Kini
5 b). Chandrakant Devram Kini
5 c). Janardan Devram Kini
5 d). Pandurang Devram Kini
5 e). Smt.Ashwini Ashok Mhatre
5 f). Kum.Sunita Devram Kini

All of Bombay, Indian Inhabitants,
residing at Kini House, Bhandup,
Bombay 400 078.

6. Janabai Gopal Kini HUF by its
Karta Janabai Gopal Kini

7. Waman Raghunath Kini
(since deceased)
all except respondent no.7
of Bombay, Indian Inhabitants,
residing at Kini House, Bhandup,
Bombay 400 078.

8. Manohar Atmaram Mhatre
of Kopri, Indian Inhabitant, residing
at Mhatre House, Kopri village,
Thane (East).

9. Mrs.Sulochna Ganesh Mhatre,
widow of Ganesh Atmaram Mhatre,
of Kopri, Indian Inhabitant, residing,
at Mhatre House, Kopri village
Thane (East)

10. Mrs.Vatsala Harishchandra Patil
of Mumbra, Indian Inhabitant,
residing at Mumbra, District Thane

11. Mrs.Pushpa Vilas Mhatre
of Kabadali, Indian Inhabitant,
residing at Kabadali, Thane.

Respondents
(Nos.1 to 3 -original
plaintiffs.
Nos. 4 to 7-original
defendant nos. 2 to 5
Nos.8 to 11-legal
heirs of
original defendant
no.1(a).)

Mr.Navin Parekh i/b. Mr.Hetal Patel for the appellants.

Mrs.U.K.Shah i/b. Mr.K.D.Shah for the respondents 1(a) to 1(f), 2 and 3.

Mr.S.A.Divan i/b. M/s.M.Jani &ˆ Co. for the respondents 4 and 5.

CORAM : R. M. LODHA &
J.P. DEVADHAR,JJ.

DATED : 20th June 2005

ORAL JUDGMENT (Per R.M.Lodha,J.)

Heard.

2. Both these appeals involve identical issues and are being disposed of by this common order.

3. During the course of hearing, the learned counsel for the original plaintiffs (respondents 1(a) to 1(f), 2 and 3 submitted that the appellants are not party to the suit and they were not impleaded in the suit as they are trespassers. If that be so, then it needs to be clarified that the order passed on 29th March 2004 making Notice of Motion No.3169/1989 absolute in terms of prayer (b) thereof cannot bind them.

4. We were taken through the order dated 13th August 1992 passed by the learned motion Judge in Notice of Motion No.443/1991. The said order appears to have been

passed by the learned motion Judge treating the present appellants as co-owners. However, the learned counsel for the plaintiffs stated before us that the appellants are trespassers.

5. The Notice of Motion No.768/1993 was taken out by the present appellants in the light of the liberty granted by the learned motion Judge in the order dated 13th August 1992. In view of the stand taken out by the counsel for the plaintiffs that the appellants are not co-owners but are trespassers and the fact that the appellants were not deliberately impleaded by the plaintiffs, the clarification needs to be made that the order dated 29th March 1994 does not bind the appellants and we clarify accordingly. No further order needs to be passed in these appeals.

6. With the aforesaid observations, both these appeals are disposed of. No costs.

(R.M. LODHA,J.)

(J.P. DEVADHAR,J.)